IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

OP.No. 4738 of 2000(L)

PETITIONERS:
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1. SMT. A.K. AMMINI, ANJILIMOOTTIL HOUSE,
NEAR C.M.S. HIGH SCHOOL, MUNDAKAYAM.(DIED)

ADDL. 2. A.K. SARASAMMA, W/O. RAGHAVAN,
OALTHALA PRAMBU, (P.O. PATTANACAD, CHERTHALA.

BY ADV. SRI.E.SUBRAMANI
SRI.S.EASWARAN

RESPONDENT:

STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. M.R. SREELATHA.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAYDELIVERED THE FOLLOWING:

O.P.NO.4738 OF 2000

APPENDIX

EXT.P1: COPY OF ORDER G.O.(RT)NO.4292/83/G.EDN. DATED 12.12.1983 ISSUED BY THE RESPONDENT.

EXT.P2: COPY OF G.O.MS NO.167/87/G.EDN. DTD 10.8.1987 ISSUED BY THE RESPONDENT.

EXT.P3: COPY OF ORDER G.O.MS NO.66/89/G.EDN. DTD 8.6.1989 ISSUED BY THE RESPONDENT.

EXT.P4: COPY OF THE PROCEEDINGS NO.75960/C1/89/G.EDN. DTD 11.12.1989 ISSUED BY THE RESPONDENT.

EXT.P5: COPY OF PROCEEDINGS ORDER NO.A6-1756/89 DTD 30.7.1989 ISSUED BY THE ADMINISTRATIVE ASST. O/O. DY. DIRECTOR (EDN) KOTTAYAM.

EXT.P6: COPY OF REPRESENTATION DT. 8.7.1991 SUBMITTED BY THE PETITIONER TO THE RESPONDENT.

EXT.P7: COPY OF JUDGMENT DTD 3.2.1999 IN O.P.NO.13620 OF 1991.

EXT.P8: COPY OF G.O.(RT) NO.5131/99/G.EDN. DTD 19.11.1999 ISSUED BY THE RESPONDENT.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

O.P.No. 4738 OF 2000

Dated this the 15th day of November, 2007

JUDGMENT

The petitioner began service as an under qualified teacher in Tribal U.P. School, Kombukuthi on 2.6.1958 and continued as such till 29.11.1960. That school was an unrecognized school. The same was taken over by the Harijan Welfare Department and the petitioner continued under the Harijan Welfare Department from 30.11.1960 till 28.3.1963. With effect from 29.3.1963, all provisional teachers appointed after 2.9.1958 in the Welfare and Tribal School were retrenched from service exempting those belonging to Schedule Tribes. Consequently, the petitioner was also retrenched from service as per Government decision. At the time of retrenchment, the petitioner had passed SSLC Examination. During 1963-1965 she was selected for TTC course to enable her to acquire training qualification for being eligible to be appointed as teacher. However, she did not pass TTC Examination. The petitioner requested the Government to appoint her in the Government service as a teacher, which was

rejected on the ground that she did not have requisite qualification for appointment. Later on, although she was not eligible to be appointed as a Class IV employee, the petitioner was offered appointment as Peon relaxing the method of appointment. She accepted the offer and joined duty on 19.1.1984 as Peon in the Education Department. She retired from service on attaining the age of 55 years on 31.10.1988. Thereafter giving the petitioner benefit of G.O.(MS) No. 66/89/G.Edn. dated 8.6.1989, the petitioner was again reinstated as Peon in Government High School, Kanjirappally with effect from 27.6.1989 allowing the benefit of continuance upto the age of 60 years. The petitioner retired from service after completing 60 years of age. After retirement, the petitioner raised a claim for regularization of her service for the period from 2.6.1958 to 29.11.1960, during which period she was working as an under qualified teacher in an unrecongnised school and from 30.3.1963 to 18.1.1984, during which period the 1st petitioner was not in service. The petitioner's request was directed to be considered as per Ext.P7 judgment in O.P.No.13620/99. Her claim was considered and rejected by Ext.P8 order. In the above

circumstances, the petitioner is seeking the following reliefs.

> a) issue a writ of certiorari or other appropriate writs, directions or orders calling for the records leading upto Ext.P8 order of the Respondent; and
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> b) quashing Exhibit P8 order of the Respondent;
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> c) issue a writ of mandamus or other appropriate writs, directions or orders compelling the Respondent to recognise and implement the legitimate claims of the petitioner for regularization of her service as a Teacher from 2.6.1958 till 18.1.1984 with all accrued service benefits like fixation of pay and other accrued service benefits".

2. The petitioner now contends that the period during which the petitioner was kept out of service namely from 30.3.1963 to 18.1.1984 is liable to be regularized in view of Ext.P2 Government order. According to her, she was kept out of service for no fault of hers and therefore she is entitled to have that period regularized as period of service for the purpose of retirement benefits.

3. Although the petitioner's case may be a hard case, I am not satisfied that the petitioner has any right as such to have her service regularized during the period when she was kept out of service. She did not have the requisite qualification

to continue as a teacher. In fact it was only as a concession that the petitioner was appointed as Peon, that too relaxing the rules relating to qualification and method of appointment. In the absence of any right for continuation in service, the petitioner cannot seek regularization of the service during which she was kept out of service. Therefore I do not find any merit in this original petition and accordingly the same is dismissed.

S. SIRI JAGAN, JUDGE

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